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March 27, 2012

Ex Parte

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Room TW-A325
Washington, DC 20554

Re: <u>Special Access Rates for Price Cap Local Exchange Carriers, WC Docket No. 05-25 and RM-10593</u>

Dear Ms. Dortch:

I am writing to respond to recent ex partes by Level 3 and others,[1] which continue to mischaracterize Verizon's special access discount plans and their pro-competitive economic justifications.

In order to provide customers greater choice to meet their needs, Verizon offers many different special access discount plans that provide substantial benefits to a wide range of special access purchasers.[2] These plans benefit both Verizon and its customers because they reflect the economic efficiencies associated with the additional predictability and certainty they provide.

Like many businesses in many industries, Verizon offers discounted pricing and benefits to its customers that subscribe to its service for an extended time period, and, generally speaking, the longer the subscription period, the greater the discount. Much like a publisher offering

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[1] *See* Letter from Michael J. Mooney, Level 3, to Marlene H. Dortch, FCC, WC Docket No. 05-25 & RM-10593 (Feb. 22, 2012) ("Level 3 Ex Parte"); Letter from Thomas Jones, tw telecom, to Marlene H. Dortch, FCC, WC Docket No. 05-25 & RM-10593 (Feb. 27, 2012).

[2] *See* Comments of Verizon on the Second Set of Data Requested for Special Access Notice of Proposed Rulemaking, WC Docket No. 05-25 & RM-10593, at 6-8 (Dec. 4, 2011); *see also* Letter from Maggie McCready, Verizon, to Marlene H. Dortch, FCC, WC Docket No. 05-25 & RM-10593 (Sept. 6, 2011) ("September Ex Parte"); Letter from Donna Epps, Verizon, to Marlene H. Dortch, FCC, WC Docket No. 05-25 & RM-10593 (July 14, 2011) ("July Ex Parte"); Letter from Donna Epps, Verizon, to Marlene H. Dortch, FCC, WC Docket No. 05-25 & RM-10593 (Feb. 28, 2011); Letter from Donna Epps, Verizon, to Marlene H. Dortch, FCC, WC Docket No. 05-25 & RM-10593, Attachment at 10-11 (Sept. 23, 2010) ("September Ex Parte"); Letter from Donna Epps, Verizon, to Marlene H. Dortch, FCC, WC Docket No. 05-25 & RM-10593 (Aug. 16, 2010) ("August Ex Parte"); Declaration of Michael D. Topper on Behalf of Verizon and Verizon Wireless, ¶ 64 ("Topper Decl.") *attached to* Comments of Verizon and Verizon Wireless, WC Docket No. 05-25 & RM-10593 (Jan. 19, 2010) ("Verizon 2010 Comments"); Reply Comments of Verizon and Verizon Wireless, WC Docket No. 05-25 & RM-10593, at 55-61 (Feb. 24, 2010, re-filed Mar. 19, 2010) ("Verizon 2010 Reply Comments").

magazine subscriptions heavily discounts the cover price for its customers who subscribe for a year, and even more so for customers who subscribe for two or three years, Verizon provides discounts off its special access rack rates for customers that commit to purchase special access from Verizon for a specified length of time, and the discounts are greater for longer commitments. For many of our plans, this term commitment is the only commitment the customer must make. Other plans also include volume commitments. This, too, is common in many industries. A family membership at a health club, for example, usually costs less per person than an individual membership. Verizon's customers have options, and they can choose whichever plan best meets their needs.

For example, a customer that purchases even only a single special access circuit can choose to subscribe to a term-only discount plan, under which the customer receives discounted pricing for keeping that circuit in service for a specified amount of time. Customers have the option to include as many circuits as they would like in term-only plans. For Verizon, these term-based discount plans provide some certainty that the revenue from the leased circuits will help cover Verizon's up-front provisioning costs, including labor and material costs. For many of Verizon's customers, the tariffed nonrecurring charge for special access service is now a negligible amount. In order for revenues to cover the costs of providing a special access circuit, the circuit needs to be in service for a certain amount of time. The commitments associated with the term-based discount plans increase the likelihood that those costs will be covered.

Verizon also offers discount plans based both on the length of the plan and the overall volume the customer purchases. These term-and-volume plans evolved over time, as customers sought more flexibility than the term-only plans afforded to move circuits to and from Verizon. Under the term-and-volume plans that Verizon offers, customers can choose from several different plans, some with several different volume levels to meet their needs, and they generally receive comparable discounts to those available with the term-only plans. In exchange for committing to keep specified circuit levels in service, the customer has the flexibility to add or disconnect circuits within the plan in order to meet its needs and satisfy its volume commitment. Like the term-only plans, the increased certainty these plans provide enables Verizon to offer discounted pricing, and with the term-and-volume plans, that includes greater certainty about the customer's spending levels.

Not only do Verizon's customers have the choice between discount plans that include volume commitments, or plans that require only term commitments, they also have a choice between plans that apply across an entire region or nationwide. Verizon's customers' options extend far beyond a binary choice between month-to-month "rack rates" and discount plans that require substantial commitments. Although, for volume-based plans, Verizon typically requires customers to enroll all the special access they purchase *from Verizon* in a single plan, none of Verizon's plans requires the customer to commit a certain percentage or all of the customer's total high-capacity purchases from all sources to the plan they select or Verizon generally. Moreover, once a customer enrolls in a discount plan, they are not "locked in" to purchasing the same amounts they purchased under previous plans. Rather, they are free to enroll in a different plan, or they can reduce the overall volumes they purchase from Verizon and enroll the lower remaining volume in the same plan after the initial term expires. Thus, customers can purchase special access from Verizon under a discount plan and still obtain additional high-capacity services from Verizon's competitors or self-supply.

Based on their mischaracterizations, Level 3 and others seek extreme regulatory relief, including disrupting existing contracts and requiring that Verizon offer discounts even to customers that make none of the volume, term, or other commitments that justify these discounts in the first instance. These measures are wholly unwarranted, particularly when the record evidence demonstrates that the special access marketplace is competitive. At a minimum, where the Commission is still evaluating the scope of competition, there is no basis for further regulatory intervention, much less the far-reaching relief that Level 3 and others seek.

I. Verizon Developed its Special Access Discount Plans to Provide a Broad Range of Choices to Customers to Meet Their Needs

Verizon's special access discount plans and individually negotiated contract tariffs, which are entirely voluntary, were developed to provide customers greater choice to meet their needs, while still providing Verizon a degree of certainty by making it easier to gauge both the amount and type of services that customers, both individually and collectively, will purchase going forward. Verizon has accordingly developed plans that meet the needs of different types of customers, while providing both parties the greater predictability needed to operate their businesses efficiently.

Consistent with these objectives, Verizon's varying plans reflect different trade-offs, for both the customer and Verizon. Some plans require customers to commit to specified volumes of circuits over a certain period, but provide flexibility as to where those circuits may be located. Other plans, which offer comparable discounts, do not contain volume commitments, but offer less flexibility to move circuits from place to place. In general, Verizon's plans are structured so that customers receive greater discounts and lower prices in exchange for providing Verizon greater predictability. Contrary to what Level 3 claims, none of Verizon's plans requires the customer to commit a certain percentage or all of the customer's total purchases from all sources to the plan they select or to Verizon generally.[3]

A. Verizon Offers a Range of Discount Plans, None of Which Links Discounts to Commitments to Purchase from Verizon a Percentage of the Customer's Total Purchases from All Sources

Verizon offers customers a choice between two main approaches as alternatives to Verizon's standard month-to-month rates: generally available discount plans, and individually negotiated pricing flexibility contracts.

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[3] *See* Level 3 Ex Parte at 9-12.

1. Verizon's Tariffed, Generally Available Discount Plans Give Customers Choices to Meet Their Business Needs.

Verizon has introduced ten generally available discount plans that are open to all customers who purchase special access services from Verizon. These plans are tariffed, subject to Section 201's just and reasonableness standard, and available everywhere Verizon offers special access services.

a. Verizon's Term-Only Discount Plans Allows Customers to Obtain Significant Discounts For As Little As a Single Circuit.

Verizon's term-only discount plans, such as the Term Pricing Plan[4] and the Service Discount Plan,[5] offer customers substantial discounts in exchange for customers' commitments to lease specific circuits from Verizon for specific terms, typically ranging from one to ten years. These plans do not include a commitment to purchase a certain volume of service from Verizon, and are not linked to the customer's past purchase volumes. The discounts available under Verizon's term-only plans range from 5 to 52 percent, with generally greater discounts for longer term commitments.[6]

Because Verizon's term-only discount plans do not require a volume commitment, they are particularly attractive to customers who purchase smaller volumes of special access circuits from Verizon. Indeed, customers who purchase even only a single circuit from Verizon in a single location can receive substantial discounts under these plans.[7] Customers can generally select the term length that best meets their needs and do not have to commit to long terms to obtain substantial discounts.

Verizon's term-only plans also are well suited to customers who are building out their own facilities and plan eventually to migrate circuits to their own networks. Customers participating in Verizon's term-only discount plans enroll each circuit separately in the plan and can choose a different term for each circuit they enroll.[8] This allows the customer to pick and choose different terms to best suit its particular business plans.

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[4] FCC No. 1, Sections 7.4.13 and 7.4.17.

[5] FCC No. 11, Section 7.4.10.

[6] *See*, *e.g.*, FCC No. 1, Sections 7.5.9(B)(1) and 7.5.16(D).

[7] *See* July Ex Parte at Exhibit A.

[8] Verizon's term-only discount plans provide discounts on a per-circuit basis and customers receive these discounts in both price cap and pricing flexibility areas. These discounts apply to Verizon's standard tariffed rates which typically vary by study area and also by rate zone. Thus, customers could pay a different rate for each individual circuit enrolled in the plan. As an example, under Verizon's Service Discount Plan (which covers the former NYNEX states), a customer who purchases ten special access circuits from Verizon in widely dispersed locations in

Thus, Verizon's term-only plans reflect a trade-off in which the customer is given the flexibility to purchase circuits as it needs them, without making an advanced commitment to purchase any specific number of circuits, in exchange for committing to maintain the circuits that it does purchase for a specified length of time. The discount available to the customer depends on the term it selects, which may vary circuit-by-circuit. Should a customer choose to migrate circuits under a term-only plan to a term-and-volume plan, Verizon waives the termination liability charges on the old plan and reduces the potential termination liability on the new plan to reflect the customer's time in service on the old plan.[9]

b. Verizon's Term-and-Volume Discount Plans Give Customers the Choice of Added Flexibility to Add and Subtract Circuits.

Over time, some of Verizon's customers began to seek additional flexibility to move circuits to and from Verizon. In response, Verizon developed other plans, such as the Commitment Discount Plan (CDP),[10] the Term and Volume Plan,[11] the Term Payment Plan,[12] and the National Discount Plan (NDP)[13] that link discounts to both term and volume commitments. The NDP, as its name suggests, is national in scope, while Verizon's other term-and-volume plans are regional in scope. The volume commitments a customer agrees to under these discount plans do require the customer to maintain, for the plan's duration, a specified percentage of the volume that it purchases from Verizon at the time it enrolls in the plan. But they do not require the customers to enroll any particular percentage of their total purchases from all sources in the plan. In exchange for their volume commitments under these plans, customers also receive added flexibility. In particular, customers are not required to keep any particular circuit in service during the selected term,[14] but may instead disconnect and move circuits across the applicable region or, in the case of the NDP, Verizon's entire nationwide footprint, provided that the customer satisfies the applicable volume commitment.

Under each of the term-and-volume plans, customers can choose varying terms (typically between two and ten years), with increasing discounts for longer terms, and for larger volumes in

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New York State would separately enroll each individual circuit in the plan. *See* Verizon's FCC Tariff No. 11, Section 7.4.10. The customer would then receive discounts on each circuit enrolled in the plan.

[9] *See, e.g.*, FCC No. 1, Section 25.1.8(F).

[10] FCC Nos. 1 and 11, Section 25.1 – For the former Bell Atlantic and NYNEX serving areas.

[11] FCC No. 14, Sections 5.6.14 and 5.6.19 – For the former GTE (western regions) serving areas.

[12] FCC No. 16, Section 7.2.1(G) – For the former Contel (western regions) serving areas.

[13] FCC No. 1, Section 25.3 – For the former Bell Atlantic serving areas; FCC No. 11, Section 25.2 – for the former NYNEX serving areas; FCC No. 14, Section 23.1 – For the former GTE (western regions) serving areas; and FCC No. 16, Section 22.1 – For the former Contel (western Regions) serving areas.

[14] Circuits under this plan are subject to a minimum in-service period, which is typically one-year.

some cases. Discounts under these plans range from 5 to 52 percent for Verizon's most highly-subscribed plan (the CDP), and from 29 to 51 percent for the NDP.[15] These discounts become available starting with in-service volumes of as few as the equivalent of 14 DS1 channel terminations for the CDP.[16]

Once a customer enrolls its special access circuits in a term-and-volume plan, Verizon allows the customer some flexibility to reduce its volume – by 3 to 25 percent, depending on the plan and service – without incurring any shortfall charges. If the customer falls below that reduced level during the term, it will incur shortfall charges. These charges do not prevent customers from choosing a competitor supplier, but instead enforce the bargain struck between Verizon and the customer at the time the customer enrolls in a plan.

Verizon's term-and-volume plans are designed for customers who purchase multiple special access circuits from Verizon. These types of customers typically want the convenience of receiving discounts without having to track the status of numerous individual circuits. In addition to ease of administration, these plans (unlike term-only plans) allow customers to move individual circuits in and out of service without incurring termination charges, provided that the applicable volume commitment level is satisfied. This feature allows customers to disconnect circuits in areas where they are building out facilities, and add new circuits in areas where they may not yet have facilities.

2. Verizon's Tariffed, Negotiated Pricing Flexibility Contracts Give Customer Further Options.

Some customers seek individualized discounts and other terms different from those contained in Verizon's generally available discount plans. These contracts are also subject to Section 201's just and reasonableness standard. Verizon has negotiated about fifty-eight unique pricing flexibility contracts with non-affiliate customers, including wireless providers, enterprise customers, and carrier customers. Each contract is published in Verizon's access service tariffs and made available to all "similarly situated" customers.[17] These contract tariffs typically provide unique provisions, rates, and discounts over and above what customers get under Verizon's other discount plans. Like Verizon's term-and-volume plans, these contracts generally provide discounts based on a term of years, and also a negotiated minimum annual revenue commitment or volume commitment.

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[15] FCC No. 1, Sections 7.4.13(B), 7.5.9, 7.5.16, 25.3.5(B); FCC No. 11, Sections 7.4.10(B), 25.2.5(B); FCC No. 14, Section 23.1.5(B); FCC No. 16, Section 22.1.5(B).

[16] FCC No. 1, Sections 25.3.2(C)(4), 25.3.4(B)(1), (2).

[17] FCC No. 1, Section 21 – For the former Bell Atlantic serving areas; FCC No. 11, Section 32 – For the former NYNEX serving areas; FCC No.14, Section 21 – For the former GTE (western regions) serving areas; and FCC No. 20, Section 9 – For all the applicable Verizon serving areas.

Like Verizon's term-and-volume discount plans, pricing flexibility contracts typically allow customers to add or drop specific circuits provided that they continue to satisfy any minimum in-service period requirements as well as any required volume commitments.[18] Verizon's pricing flexibility contracts also provide broad discounts in the areas where the customer seeks additional discounts. While customers can negotiate pricing flexibility contracts with a national scope, customers can also negotiate for pricing flexibility contracts covering much narrower geographic regions such as a metropolitan statistical area (MSA) or groups of MSAs.[19]

B. Verizon's Discount Plans Reflect Legitimate Economic Efficiencies

Verizon bases the various options it offers to customers interested in discount plans on the legitimate economic efficiencies the discount plans provide.[20]

First, many of Verizon's discounts are based on the overall volume purchased. For example, many of Verizon's term-and-volume plans and contract tariffs offer greater discounts in exchange for larger volume commitments. As a basic economic matter, selling in greater bulk creates efficiencies by, among other things, reducing the number of individual transactions needed to sell a specified volume, increasing the supplier's certainty of doing business, and enabling fixed costs to be spread over a larger base. Level 3 and others do not contest that volume discounts are a legitimate practice.[21]

Second, Verizon generally offers greater discounts under its plans to customers who commit to longer terms. Term-based discount plans provide Verizon with increased certainty that the circuits will be in service long enough to generate enough revenue to cover the up-front costs associated with provisioning special access, including labor and material costs. In many circumstances, the tariffed nonrecurring charge for special access service is a negligible amount, far less than Verizon's up-front cost of provisioning the circuit. Term-based plans therefore help

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[18] In contrast to generally available discount plans, under the existing pricing flexibility regime, Verizon is only able to offer individualized pricing flexibility contracts in areas where Verizon has satisfied the competitive triggers necessary to obtain either contract tariff or uncapped pricing flexibility relief. As a result, the discounts available under Verizon's pricing flexibility contracts apply only to special access services purchased in areas where Verizon has obtained such relief. However, customers who subscribe to pricing flexibility contracts can aggregate Verizon special access purchases for pricing flexibility and price cap areas to satisfy any applicable minimum volume or revenue commitment.

[19] For example, Option 34 in FCC No. 1, Section 21.35, limits the geographical scope of the contract to the New York MSA. Option 28 in FCC No. 1, Section 21.29, limits the scope to the New York and New Brunswick MSAs. Option 4 in FCC No. 1, Section 21.5, is limited to the Washington, Baltimore, Norfolk and Newport News MSAs.

[20] *See* Topper Decl., ¶¶ 62-67; *see also* 2010 Reply Comments at Exhibit A: Reply Declaration of Michael D. Topper, ¶¶ 15-18.

[21] *See* Level 3 Ex Parte at 9 ("there are legitimate business justifications for selling 1,000 circuits at a lower per-unit price than ten circuits").

ensure that Verizon can potentially earn a return on the investment required to provision the circuit.[22]

Consistent with the rationale behind these term discounts, customers who choose one of the plan options that require a volume commitment agree to maintain the levels to which they committed in exchange for the attractive discounts and other beneficial features. If customers were permitted to significantly alter the volumes from year to year, it would eliminate the predictability on which the discount was based in the first instance. At the same time, Verizon recognizes that customers need a certain degree of flexibility, and that allowing for such flexibility within reason does not significantly undermine the predictability benefits that Verizon receives. Thus, as noted above, even Verizon's term-and-volume plans are structured so that customers can decrease their purchases by up to 3-25 percent, depending on the plan, without incurring shortfall charges.[23] For decreases that exceed those levels, customers are subject to shortfall charges reflecting the fact that Verizon will no longer receive the predictability for which it bargained.

In practice, even when customers pay shortfall charges, they generally retain a significant amount of the discounts they had already received.[24] Moreover, customers who seek to migrate all their circuits away from Verizon may choose to cancel their plan and pay termination liability fees. Under Verizon's highly-subscribed term-and-volume plan, the CDP, these fees are fixed at levels that generally leave the customer in the same position it would have been had it originally committed to the actual term that it completed.[25] For example, if a customer cancels its CDP plan three years into a five year term, the termination liability is approximately the difference between the five-year and three-year discount as applied to that volume.

II. Level 3 and Others Mischaracterize Verizon's Plans

A. Level 3 and others' core claim is that Verizon and other price-cap LECs offer "lock-up contracts and tariffs" that "prevent[] purchasers of special access from switching more than a small fraction of their purchases to competitive suppliers."[26] According to Level 3, customers are required "to purchase the same or virtually the same volume of special access

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[22] Level 3 argues that price-cap carriers cannot properly justify discount plans on providing greater "predictability," because the circuits already exist and are paid for, and because the benefits received from such plans exceed any incremental cost savings. *See* Level 3 Ex Parte at 24. Level 3 provides no citation or support for either assertion.

[23] FCC No. 11, Section 7.4.10; FCC No. 14, Section 5.6.14(G).

[24] *See* Verizon 2010 Reply Comments at Exhibit B: Declaration of Quintin Lew and Anthony Recine ¶¶ 29-32, 40 ("Lew/Recine Decl."); *see also* Verizon August Ex Parte at 8.

[25] *See* Lew/Recine Decl. ¶ 30.

[26] Level 3 Ex Parte at 4.

from the price-cap LEC that it purchased in preceding periods."[27] These claims mischaracterize Verizon's plans and do not justify Commission intervention.

As an initial matter, none of Verizon's plans, contrary to what Level 3 suggests, requires a customer to commit to purchasing from Verizon a certain percentage of or all of their total special access purchases from all sources. Indeed, Verizon has no way to determine how much special access a customer self-provisions or purchases from other providers, much less the ability to enforce a requirement that would limit those purchases or self-supply.

Nor does Verizon require customers to commit to purchasing the same volumes as in preceding periods when their plans expire. When a customer's plan expires, it has many options, including migrating all of its circuits away from Verizon. If the customer decides to keep some or all of its circuits with Verizon, it may renew its existing plan or choose a different plan. For example, a customer that originally enrolled in a volume-and-term plan may, at the end of that plan, enroll in a term-only plan that contains no volume commitment. Under these term-only plans, Verizon East[28] customers (which account for the vast majority of Verizon's special access revenues) are able to get the same discounts available under Verizon's highly-subscribed term-and-volume plan (the CDP), and discounts comparable to those available under the NDP.

A customer in a volume-and-term plan may, at the end of the term, also choose to renew that plan, or enter into another volume-and-term plan, but at a lower volume. For example, take the case of a customer who committed to purchase 1,000 circuits for a three-year term but that was purchasing only 900 circuits at the end of the term, consistent with the flexibility Verizon offers. If that customer decides to subscribe to the same plan for a new term with only 800 circuits, it can do so. If the customer elects that option, it also has choices in deciding how it wants to deal with the 100 remaining circuits. If the customer already has obtained circuits from another provider and it no longer needs the circuits, it may simply terminate them. If it has not yet made arrangements or if it wants to transition the circuits to another provider, it may continue to purchase the 900 circuits on a month-to-month basis until it is ready to terminate the 100 circuits or until their migration is complete. Once the migration is complete and the customer is ready to enroll the 800 circuits in a new plan, it may do so, and the customer will receive the discount associated with the new volume and term commitment it makes.

In addition, in the case of the CDP, if a customer renews the plan with a term of five years or longer, Verizon provides for a "time-in-service" credit, which shortens the new term by

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[27] *Id*.

[28] Verizon East generally refers to the former Bell Atlantic and former NYNEX regions, which are served under FCC Tariffs Nos. 11 and 1, respectively. Verizon West generally refers to the former GTE region, which is served under FCC Tariff Nos. 14 and 16.

twenty-four months. This would, effectively, shorten a new service term of five years to just three years.[29]

B. Level 3 next claims that Verizon's Contract Option 10[30] requires customers to use Verizon for "all or virtually all of its needs."[31] In fact, this Contract Tariff contains no such requirement, but instead provides a discount "to any purchaser that signed up during a specified 61-day window, that purchased between $49,000,000 and $56,000,000 of special access during the one-year term."[32] According to Level 3, Verizon "clever[ly]" "set the minimum volume for participating in the tariff at all or nearly all of that purchaser's existing volume." *Id.* There is no merit to this claim. First, Verizon individually negotiated this contract tariff based on a specific customer's volume. Verizon had no knowledge of that customer's total special access purchases from all providers (including its purchases from other carriers), nor does Verizon have knowledge of other purchasers' total special access purchases from all sources. Second, while some contract tariffs require significant volume commitments, others discount smaller levels.[33] Third, as with respect to Level 3's other claims, these contract tariffs are entirely optional – customers can choose other discount plan options that contain none of the volume thresholds about which Level 3 complains.

Level 3 also complains that Verizon offers "portability clauses," which it considers "important," only as part of term-and-volume plans and not as part of other discount plan options.[34] As explained above, however, Verizon's ability to offer discounts without regard to any particular circuit at any particular location is tied to the customer committing to purchase a certain volume over a large region. Customers who want this option must be willing to agree to the economically justifiable trade-offs that come with it. In order to obtain the benefit of portability clauses, moreover, it is not necessary to make substantial volume and term commitments; these clauses are available starting at volumes of the equivalent of 14 DS1 channel terminations with a two-year commitment under the CDP.[35] Moreover, in some cases, as Level 3 later acknowledges, Verizon also "makes portability or upgrades available without a

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[29] FCC No. 1 Sections 25.1.8(H) & Table, Section 25.1.8(H)(4); FCC No. 11 Sections 25.1.10(G) & Table, 25.1.10(G)(4).

[30] FCC No. 1, Section 21.11.

[31] Level 3 Ex Parte at 10.

[32] Level 3 Ex Parte at 11.

[33] For example, Contract Option 61 in FCC No. 1, Section 21.62, has a volume commitment of up to $205,800.

[34] Level 3 Ex Parte at 11 & n.34 (citing Verizon FCC No. 1, Section 25.3.1; Verizon West FCC No. 14, Section 5.6.14; Verizon East FCC No. 1, Section 7.2.13).

[35] *See* Lew/Recine Decl. ¶¶ 19, 22, 24.

volume commitment."[36] And if customers do not value portability highly, they also have the option of term-only plans, which do not require any volume commitment. Customers can choose which plan option best fits their needs.

Finally, Level 3 argues that Verizon conditions discounts on a "purchaser entering into identical . . . contracts with the price-cap LEC in widely dispersed geographic regions."[37] What Level 3 appears to be claiming is that, because Verizon's term-and-volume plans apply on a region-wide or nationwide basis, customers of those plans cannot choose plan one plain in one region and a different plan in another region. That is incorrect. Verizon does permit customers to enroll in different plans in the Verizon East and Verizon West territories. A customer may choose a term-and-volume plan in one region and opt for individual term plans in a different region. If a customer does prefer a term-and-volume plan for all regions, Verizon bases the volume on all their purchases, giving the customer the flexibility to move circuit purchases between regions. A customer that thinks it may wish to use competitive supply in some areas but not others can choose a plan and commitment level that offers that flexibility, or they can enroll in term-only plans that require no volume commitment at all.

C. Level 3 next attempts to portray Verizon's discount plans as anticompetitive "tying" arrangements. These arguments fail for the same reasons as Level 3's other claims.

Level 3 first argues that Verizon's plans tie purchases "in non-competitive and potentially competitive locations."[38] According to Level 3, discounts are "offered only on a regional or nationwide basis, meaning that the commitments and penalties are assessed on the same wide basis."[39] As explained above, this is not true in Verizon's case. Verizon's term-only discount plans, for example, provide discounts regardless of region or location. As a result, the competitive pressures in competitive areas discipline prices in supposedly less competitive areas, providing the customer greater benefits. Moreover, while Verizon's term-and-volume plans do provide discounts on a regional or nationwide basis, the customer is not required to commit to purchasing only from Verizon, and can enroll in these plans without making significant volume commitments.

Level 3 further claims that Verizon's "shortfall penalties" place customers in a situation where the cost of using a competitive provider exceeds any cost savings, creating a scenario where "even if the CLEC gave away their circuit in the locations where they could compete, the

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[36] Level 3 Ex Parte at 21. Although Level 3 claims that these plans "contain numerous restrictions," all evidence points to the contrary.

[37] Level 3 Ex Parte at 14 (citing Verizon FCC No. 1, Sections 21.30(A)(2), 21.60(A), 32.32(A)(2), 32.49(C)(4), 32.55(C)(4); and Verizon FCC No. 15, Section 21.23(c)(4)).

[38] Level 3 Ex Parte at 14.

[39] *Id.* at 15.

customer is still better off committing all of its demand to the price-cap LEC."[40] Level 3's hypothetical wrongly suggests that customers enrolled in a plan should be entitled to the full discounts even where they fail to purchase the volumes to which they agree and that justified those discounts in the first instance. Special access purchasers who want the benefits of significant discounts under Verizon's plans obviously need to accept the trade-offs that come with them, which make those discounts possible in the first place.

Level 3 also argues that price-cap LECs "condition discounts on channel terminations, for which the price-cap LECs have the most market power, on purchases of interoffice transport from the price-cap LEC, for which the price-cap LECs have less market power."[41] But Verizon's generally available discount plans do not require customers to purchase any interoffice transport from Verizon in order to receive discounts on channel terminations. If a customer does elect to purchase interoffice transport from Verizon, under one of Verizon's generally available discount plans, the NDP, Verizon does require the customer to establish separate commitment levels for channel terminations and for interoffice transport, which are treated separately.

III. The Record Does Not Support the Extreme Measures that Level 3 and Others Seek, Which Would Only Result in Fewer Options Being Made Available to Customers

The relief that Level 3 and others seek will only result in fewer options being made available to special access customers. Level 3, for example, asks the Commission to preclude price-cap LECs from offering many different types of discount plans going forward, and also seeks to amend all existing plans "to reflect commitments that are no greater than the maximum percentage permitted by the Commission."[42] The inevitable result of this would be fewer choices.

Not only would Level 3's sought-after restrictions limit customer choice, they also would wreak havoc on the special access marketplace. For example, customers would have to renegotiate dozens of individually negotiated contract tariffs, and special access providers would have to reformulate generally available discount plans. As described above, the discounts that Verizon offers under these various plans reflect legitimate economic considerations. With respect to each specific plan, the discounts are linked to other terms and conditions. Were the Commission to alter one key variable of these plans, it would necessarily affect other terms and conditions. The Commission should not even entertain such a disruptive approach.

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[40] *Id*. at 16 (citing Verizon FCC No. 1, Section 21.42(J); Verizon FCC No. 11, Sections 32.51(N), 32.59(H)(3)(b); FCC No. 14, Sections 21.21(J)(1), 21.23(J), 21.25(N)).

[41] *Id*. at 16.

[42] *Id*. at 28.

Level 3's and others' request for immediate intervention also assumes away the issue that is at the core of this proceeding. At the time the Commission initiated this proceeding, it recognized that a critical prerequisite to any further regulatory action was to complete a comprehensive review of competition for special access services.[43] Verizon has provided substantial evidence that competition for special access is significant and growing, particularly with the advent of cable and fixed wireless technologies. Level 3 concedes that the special access marketplace "has evolved rapidly in the last decade,"[44] and makes no attempt to rebut the extensive evidence of competition that Verizon and others have submitted in the record. Thus, Level 3 provides no basis for the Commission to take action without, at a minimum, first completing its evaluation of special access competition.

Sincerely,

Donna Epps

cc: Deena Shetler
Nick Alexander
Betsy McIntyre

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[43] *See Special Access Rates for Price Cap Local Exchange Carriers*; *AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, Order and Notice of Proposed Rulemaking, 20 FCC Rcd 1994, ¶¶ 71-73 (2005) ("*Special Access NPRM*"); *see also Competition Data Requested in Special Access NPRM*, Public Notice, 26 FCC Rcd 14000 (2011).

[44] Level 3 Ex Parte at 3.